

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHILLIP GARCIA,

Defendant.

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Case No. CR 07-788 JB

DEFENDANT’S UNOPPOSED MOTION TO CONTINUE
FINAL REVOCATION HEARING

Phillip Garcia, Defendant, through undersigned counsel, moves the court to continue the Final Hearing re Revocation of Supervise Release, set for November 4, 2020 at 3:30 pm, for sixty days.

As grounds counsel states:

1. Mr. Garcia appeared in Magistrate Court for a preliminary revocation and detention hearing on September 18, 2020, on a *Second Amended Petition for Revocation of Supervised Release* [Doc. 166] and a *Second Amended Violation Report* [Doc. 167], filed September 1, 2020.
2. The *Second Amended Petition* alleges five violations of Mr. Garcia’s mandatory conditions of supervised release – that he unlawfully possessed controlled substances on three separate occasions and that he committed other crimes and was facing charges in three separate State of New Mexico criminal cases. The guideline revocation range for the alleged violations is 21 to 24 months of imprisonment [Doc. 166].
3. The Magistrate Court ordered Mr. Garcia detained pending further proceedings

[Doc. 179]. Mr. Garcia is in the custody of the United States Marshals at the Cibola County Correctional Center.

4. The Court set this matter for a Final Hearing re Revocation of Supervised Release on November 4, 2020 at 3:30 pm [Doc. 180]. Mr. Garcia requests a sixty-day continuance of that date in order to complete several tasks.

5. Defense counsel has been investigating the allegations of the *Second Amended Petition*. Because these revocation proceedings involve alleged new criminal activity, the parties requested reports and records from state and tribal agencies. This investigation is ongoing.

6. The parties are also engaged in discussions about an agreed-upon disposition of the *Second Amended Petition*. Mr. Garcia faces the possibility of additional state criminal penalties should he choose to waive his right to a contested evidentiary hearing and admit to violating the conditions of his supervised release. The parties are engaged in the process of exploring whether this might be avoided through a negotiated resolution to present to the Court.

7. Counsel believes that sixty days is the minimum amount of time necessary in order for the parties to complete an investigation into the allegations and finalize discussions about a negotiated resolution. Counsel requests the Court continue the hearing for sixty days in order to complete these tasks.

8. Additionally, counsel discovered a conflict in the office of the Federal Public Defender that prevents her from continuing to represent Mr. Garcia. Due to this conflict, counsel filed an *Unopposed Motion to Withdraw* [Doc. 181]. That matter remains pending.

9. Counsel requests the Court continue the Final Hearing re Revocation of Supervised Release for sixty days to allow time for new counsel to be appointed and be

prepared to move forward.

WHEREFORE, Mr. Garcia, through counsel, respectfully requests that this Court continue the Final Hearing re Revocation of Supervised Release, set for November 4, 2020, for sixty days for the reasons argued herein.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER

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Electronically filed October 30, 2020

/s/ Mallory Gagan

Assistant Federal Public Defender